

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 January 2013

Public Authority: Sheffield City Council

Address: Town Hall
Pinstone Street
Sheffield
S1 2HH

Decision (including any steps ordered)

1. The complainant requested details of correspondence sent to the secretary of a bowling club between particular dates. Sheffield City Council ("the council") said that it held one letter falling within the scope of the request, but it was exempt under section 40(2) of the Freedom of Information Act 2000 ("the FOIA"), the exemption relating to third party personal data.
2. The Commissioner's decision is that the council correctly withheld the information using section 40(2), except for that information which was the personal data of the complainant. That information was exempt under section 40(1).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 13 January 2012, the complainant requested information from the council in the following terms:

"On 30 January 2010 to 31 December 2011 copies of all:-

1. *Documents etc. or*
2. *Correspondence etc. or*
3. *Reports etc. or*
4. *Meetings etc. or*

Which may have been

1. *Sent etc. or*
2. *Passed etc.or*
3. *Arranged etc. or*
4. *Forwarded etc.*

To [name and contact details] Who is Green Oak Park Bowling Club Secretary of Sheffield South Yorkshire, England, with references to:-

Articles 12, 11, 14, 16, 17, 18, 20, 24 contract from 1 April 2010 to 31 March 2011

And

Articles 11, 14, 19, 20, 21, 22, 27, 29, 31, 32 Taken from Bowling terms and conditions of hire 2011

1. *Self Managed Contract supplied by Parks and Countryside Department, Sheffield City Council and Sheffield City Council's Parks and Countryside Bowling Terms and Conditions of Hire Contract 2011. From*

*1 April 2010 31 March 2011
1 April 2011 31 March 2012*

All correspondence documents must be signed dated and if necessary showing times when meetings etc. have taken place".

5. The council responded on 4 April 2012. It refused to supply the information on the basis that it was exempt under section 40(2) of the FOIA.
6. The complainant requested an internal review on 27 April 2012.
7. The council told the Commissioner that it had reviewed the refusal at the same time as its review of another request on 22 May 2012 but unfortunately it did not communicate the outcome relating to this particular request within that letter. Following further prompting from the complainant, the council said that the refusal notice had been overturned because all of the information had been provided. The council said that it made a mistake in saying this and that it should have said that it was upholding the original application of section 40(2).

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically

asked the Commissioner to consider whether the council had correctly refused to provide the information he had requested. He also alleged that further information was held.

9. The council withheld one letter falling within the scope of the request from the council to the bowling club secretary dated 28 September 2010. When this was provided to the Commissioner, it became apparent that the vast majority of the information contained within the letter was actually the personal data of the complainant. Personal data is defined by the Data Protection Act 1998 ("the DPA") as any information relating to a living and identifiable individual. Information that is a requester's own personal data is exempt from disclosure under the FOIA by virtue of section 40(1). The Commissioner's obligation under the DPA is to conduct an assessment to consider the complainant's rights under section 7 of the FOIA. This has been carried out separately and the analysis in this notice does not relate to that information.
10. For the avoidance of any doubt, the council said that it had disclosed the information relating to the bowling terms and conditions of hire. It said that the document relating to 2011/12 had been disclosed on 4 July 2011 and the document relating to 2010/11 was disclosed during the Commissioner's investigation and has therefore not been addressed in this notice.

Reasons for decision

Section 1(1) – Was any more information held?

11. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him.
12. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically

- whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities".¹
13. The council identified that it held one letter sent to the bowling club secretary. It said that it wished to maintain that no further correspondence was held falling within the scope of the request. The council said that the Parks Service hold the information relating to the bowling club and the complainant's contact. It said that the Head of Parks and Public Realm had carried out a search of the records held, including the records belonging to a particular officer who had dealt with the matters concerned. He confirmed that no further information was held. The council said that no information had been deleted, destroyed or mislaid.
 14. The Commissioner asked the complainant to explain why he believed that further information was held. The complainant specifically referred to a letter written to a particular council officer dated 30 September 2011. He said that this letter includes comments indicating the officer's intention to write to the secretary of the bowling club. The council said that it had considered the letter referred to however the officer did not subsequently write to the secretary.
 15. The complainant also referred to a witness statement which refers to two letters from the secretary of the bowling club to the council dated 4 September 2010 and 26 February 2012. The complainant said that he would be surprised if the council did not respond or acknowledge this correspondence. The Commissioner considers that any response or acknowledgement sent by the council to the letter of 26 February 2012 would not fall within the scope of this particular request since it is limited to the dates specified. In relation to the letter of 4 September 2010, the letter that is being withheld in this case is clearly the council's response to this correspondence.
 16. Based on the above, the Commissioner was satisfied that on the balance of probabilities, no further falling within the scope of the request was held.

¹ This approach is supported by the Information Tribunal's findings in Linda Bromley and Others / Environment Agency (31 August 2007) EA/2006/0072

Section 40(2) – Third party personal data

17. This exemption provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the DPA.

Is the withheld information personal data?

18. Personal data is defined by the DPA as any information relating to a living and identifiable individual. As indicated in the scoping section of this notice, the vast majority of the letter is the personal data of the complainant and has therefore not formed part of the Commissioner's investigation under the FOIA. There is a minimal amount of information that is not the complainant's personal data within the letter. The Commissioner notes that the withheld information is a letter from the council to a bowling club secretary. The Commissioner considers that it is appropriate to treat the letter as comprising of information that is the personal data of the secretary of the bowling club.

Would disclosure breach the Data Protection Principles?

19. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations

20. The council highlighted that the correspondence had been addressed to an individual acting in her capacity as an officer of a private sporting club and there would therefore be a reasonable expectation that the correspondence would remain confidential. The council said that it had consulted the secretary of the club and she had also objected to the disclosure. While an objection does not in itself make a disclosure unreasonable, it is sometimes a useful indicator of the nature of the expectations that the individual had. The Commissioner considered that in view of the circumstances, it was reasonable for the secretary to assume that correspondence between herself and the council would remain confidential.

Consequences of disclosure

21. The Commissioner considers that given the subject of the correspondence and the circumstances, disclosure of the letter could be

distressing and may cause the secretary to have concerns that correspondence in the future would be disclosed, which may affect the nature of her future communication with the council.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

22. There is always some legitimate public interest in the disclosure of information that is held by public authorities. This helps to promote the aims of transparency and accountability. However, in the circumstances of this particular case, the Commissioner considered the rights of the data subject significantly outweighs any public interest in disclosing the information.
23. It is apparent that the complainant has been in dispute with the council for some time about access to some toilets on the site. However, the council highlighted that it had already dealt with the complainant's complaint about that issue, albeit that he remains unhappy with the outcome. The council said that in its view, there is limited public interest in the disclosure since the complainant's main concern is his own complaint, which is personal to him and his family. In view of the circumstances, the Commissioner agrees that this is a fair assessment of the situation. The public interest in disclosure of the information is even more limited when taking into account that the vast majority of the letter is actually the complainant's own personal data in any event and cannot be disclosed to the public under the FOIA.

Right of appeal

24. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

25. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF